IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.07.2006

CORAM

THE HONOURABLE MR. JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MS. JUSTICE K.SUGUNA

W.P. NOS. 14729 & 15025 OF 2000

WP No. 14729 of 2000

Union of India
rep. by the Secretary to Govt.
Ministry of Finance
Department of Revenue
North Block, New Delhi. .. Petitioner

- Vs -

1) Mr. A.K.Mathew

2) The Registrar
Central Administrative Tribunal
Chennai Bench, Chennai. .. Respondents

WP No. 15025 of 2000

1) Union of India
rep. by the Secretary to Govt.
Ministry of Finance
Department of Revenue
New Delhi - 2.

2) The Commissioner of Customs
Customs House, Chennai - 1. .. Petitioners

- Vs -

1) Central Administrative Tribunal
Chennai Bench, Chennai.

2) K.S.Srinivasan .. Respondents

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W.P. No.14729 of 2000 filed praying this court to issue a Writ of Certiorari calling for the records relating to O.A. No.556/98 on the file of the CAT, Chennai, quash the order dated 2.7.99 as stated therein.

W.P. No.15025 of 2000 filed praying this court to issue a Writ of Certiorarified Mandamus calling for the records relating to O.A. No.674/98 dated 22.1.99 on the file of the first respondent, quash the same as stated therein.

For Petitioners : Mr. P.Wilson SCCG in WP 14729/00
Mr. S.Manikumar SCGSC in WP 15025/00

For Respondents : Mr. Karthik Raja for
Mr. R.Parthiban for R-1 in WP 14729/00
Mr. V.Vijayshankar for R-2
in WP 15025/00

COMMON ORDER

(ORDER OF THE COURT WAS MADE BY K. SUGUNA, J.)

The writ petitions have been filed by the Union of India represented by its Secretary to Government, Ministry of Finance, challenging the order of the Central Administrative Tribunal passed in O.A. Nos.556/98 and 674/98 respectively.

2. The facts leading to these petitions could be briefly set out as hereunder. The first respondent in W.P. No.14729/00 and the 2nd respondent in W.P. No.15025/00, while working as Preventive Officers in the petitioner-Department, certain allegations were levelled against them and a charge memo dated 5.1.89 was issued. An enquiry was conducted in December, 1990 and the enquiry officer submitted his report subsequent to the enquiry in June 1990 and explanation of the respective respondents were also called for. Subsequently, the disciplinary authority, namely, the Additional Collector of Customs, by an order dated 25.3.99, basing on certain lapses in the enquiry, dropped the charges. Subsequent to the dropping of the charges, a show cause notice dated 17.8.95 has been issued by the department to the respective respondents and they also submitted their replies for the same. Subsequent to this, another enquiry was conducted by the disciplinary authority and based on this enquiry, by order dated 17.2.98, (i.e.) after a lapse of 7 ½ years, the penalty of reduction of pay for a period of one year was imposed on the first respondent in W.P. No.14729/00, while a penalty of 10% cut in monthly pension for a period of one year was imposed on the 2nd respondent in W.P. No.15025/00. Challenging the same, the respective respondents filed O.A. Nos.556/98 and 674/98 and the same has been allowed by the Central Administrative Tribunal by order dated 2.7.99. As against the said order of the Central Administrative Tribunal, the petitioner-Department has filed the present writ petitions.

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3. According to the learned counsel appearing for the petitioner-Department, as per Regulation 51 applicable to the petitioner-Department, the primary responsibility lies with the Preventive Officer and as such the allegation levelled against the Preventive Officers was rightly held as proved by the reviewing authority. Apart from that, according to the learned counsel, the finding of the Tribunal, in that the Assistant Collector has got the responsibility and not the Preventive Officer is also contrary to the Regulations, since according to the learned counsel, the very wording of Regulation 51 itself clearly establish that the primary responsibility is only with the Preventive Officer and not with the Assistant Collector. The further contention of the learned counsel for the petitioner-Department is that, since the matter was dealt with stage by stage by various officers and only then it was decided to initiate action against the respective respondents, there has been delay, which has led to the impugned order coming to be passed only in the year 1998. Hence, this is not a case of unexplained delay. As such the order of the Tribunal, which has been passed merely on the question of delay alone, is not sustainable and the writ petitions have got to be allowed. That apart, according to the learned counsel for the petitioner-Department, for the allegations levelled, the penalty imposed is a very minor one and as such the order of the Tribunal has got to be set aside.

4. We have considered the submissions of the learned counsel for the petitioner as well as learned counsel for the respondents.

5. As far as the submissions of the learned counsel for the petitioner that Preventive Officers alone have got the responsibility for making an entry with regard to one TR concession, even at the first instance it is to be stated that as per Section 51 of the Regulation itself, the cumulative responsibility is on the Superintendent as well as the Assistant Collector. For the sake of appreciation of these petitions, the charge levelled against the first respondent in W.P. No.14729/00 could be set out hereunder :-

> "That Sh. A.K.Mathew while functioning as Preventive Officer (SG) of Air Cargo Complex, Meenambakkam, Madras between December '84 to May '85 committed gross misconduct and failed to maintain absolute integrity and devotion to duty in as much as he on 1.2.1985 endorsed in the baggage declaration of Sh. Abdul Majid that the goods in respect of which TR claims were made shows signs of usage and recommended grant of TR concessions to the above claimant while in fact they were new ones and hence not eligible for TR concessions and thereby enabled the said person to evade payment of Customs duty on the said articles of foreign origin and thus contravened Rule 3 (1) (i) & (iii) of C.C.S. (Conduct) Rules, 1964."

As per the charge levelled against the respective respondent, which is on the same lines is concerned, the respective respondent had recommended for

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TR concessions inspite of the fact that the goods are new ones, but even as per the order of the disciplinary authority dated 25.3.91, the initial charges were dropped as against the respective respondent. It is also to be pointed out that in the enquiry conducted, not only documents were not allowed to be marked but also witnesses on the side of the delinquent were not even permitted to be examined. The allegations levelled against the respective respondent is that wrong entry has been made with regard to the TR concession, but unless and until a reasonable opportunity has been given to the delinquents, they could not have had a proper opportunity to disprove the allegation levelled against them.

6. That apart, the allegation levelled against the respective respondent is that he has failed to maintain absolute integrity and devotion to duty with regard to the TR concession in relation to the goods of one Mr.Abdul Majid and Mr.J.Kuthus. It is the contention of the learned counsel for the petitioner that responsibility lies with the respective respondent, who, as Preventive Officer, is supposed to make an entry in the TR concession about the nature of the goods. It is to be pointed out here that there is no specific Regulation which would enforce that as the Preventive Officer, the respective respondent had the sole responsibility of making a notation in the TR concession . As there is no specific Regulation enforcing the Preventive Officer to make an entry in the TR concession, the above contention of the learned counsel for the petitioner is without any merits.

7. With regard to the next contention of the learned counsel for the petitioner that though the disciplinary authority has dropped the charges by an order dated 25.3.91, but the review order has been passed only in the year 1998, which is after a lapse of seven years and the same is due to the fact that as the matter has been dealt with stage by stage by the departmental authorities delay has crept in in taking action against the delinquents. Though the argument of the learned counsel, on the face of it sounds attractive, yet for the reason that the disciplinary authority has dropped the charges as early as in the year 1991 and the review order has been passed only in the year 1998 after a lapse of seven years, we could safely hold that the said order has not been passed within a reasonable time and seven years period is too long a time and the same cannot be termed as a reasonable time by any stretch of imagination.

8. Our attention was drawn to the judgments reported in Rama Rao Vs. President, Council of Scientific and Industrial Research, New Delhi reported in 1987 (5) ATC 575 and T.Raji Reddy Vs. Union of India reported in 1991 (17) ATC 838 and also a judgment of the Division Bench of this Court in W.P. No.33978/02 and also the subsequent decision of the Division Bench of this Court in 2005 (2) MLJ 154 wherein delay of eight years and five years have been taken into consideration in setting aside the penalty of 20% cut in pension awarded. Though the learned counsel for the petitioner contends that the delay has arisen since the matter was dealt with stage by stage by the departmental authorities, the same does not

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merit acceptance. That apart, though the punishment has been imposed on the basis of an enquiry conducted by the enquiry officer, it has to be pointed out that the same has not been conducted as per the rules and as per the procedures and norms laid down and, hence, the same is not sustainable in the eye of law.

9. Apart from this, the incident has taken place in the year 1984 and as per the then existing rules, only the Superintendent has got the power to verify the goods and he is to make the necessary endorsement. The rules have been amended only in the year 1987 wherein Preventive Officers were also made as one of the examining officers. But for the incident which took place in the year 1984, applying the rule which came into effect only in the year 1987, the allegation as against the respective respondent cannot be held proved and also the respective respondent cannot be made responsible. That apart, as stated above, for the occurrence that took place in the year 1984, punishment has been imposed only in the year 1998, by which time the respective respondent reached the age of superannuation, and enforcing the said penalty will have a consequence on their pension and we see no merit to uphold the penalty.

10. In result, there are no merits in both the writ petitions and they are liable to be dismissed. Accordingly, the writ petitions are dismissed with no order as to costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Registrar
   Central Administrative Tribunal
   Chennai Bench
   Chennai.

2. The Commissioner of Customs
   Customs House
   Chennai.

+ 1 CC To Mr. S.Manikumar, SCGSC SR NO.30335

+ 1 CC To Mr. P.Wilson, Advocate SR NO. 30644

+ 1 CC To Mr. R.Parthiban, Advocate SR NO. 30743

+ 1 CC To Mr. V.Vijay Shankar, Advocate SR NO. 30453

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